

**RESPONSE OF LEGAL ACTION OF WISCONSIN, INC.
TO OFFICE OF INSPECTOR GENERAL
DRAFT REVIEW OF CASE STATISTICAL REPORTS
JUNE 23, 1999**

I. INTRODUCTION

Between July 20 and July 30, 1998, the Office of Inspector General of the Legal Services Corporation conducted an intensive audit of Legal Action of Wisconsin, Inc. During that audit, the members of the OIG Audit Team -- Anthony Ramirez, Terry Oehler and Eric Young -- were congenial, cordial, courteous and professional. They were cooperative in working through some thorny attorney-client confidence problems, and they accommodated our need to continue serving our clients while being audited.

The draft audit report was issued on May 11, 1999, and was received by Legal Action at approximately 11 a.m. on May 17. According to the cover letter, Legal Action's response was due May 21. Legal Action's Executive Director, John Ebbott, requested of Mr. Leonard Koczur, the Assistant Inspector General for Audit, an extension of time to respond until June 17. Mr. Ebbott also requested the specific case file numbers of the cases cited in the draft audit report so that he and his staff could review those case files and be better able to respond. Mr. Koczur graciously granted those requests.

Between May 26 and June 16, the Audit Team leader, Mr. Ramirez, worked cooperatively with Mr. Ebbott to provide the information which Mr. Ebbott had requested.

The following Legal Action response to the OIG's Draft Review of Case Statistical Reports (hereafter **A**Draft OIG Report[®] or **A**Report[®]) is based on the report itself, on the information provided by Mr. Ramirez, on Legal Action's own records of the audit and on Legal Action files.

Legal Action would like to express its appreciation to the Audit Team, and to Mr. Ramirez in particular, for their courtesy and consideration throughout. The vigor of the following response is not a result of any antipathy toward the Audit Team. It is a result of our belief that, because of the audit's design, the Draft OIG Report is not sufficiently balanced, and is narrow, unfair and inaccurate. It unjustly criticizes Legal Action of Wisconsin without any recognition of the enormous amount of work which Legal Action staff does on behalf of our clients, or the quality of that work.

II. METHODOLOGY. THE DRAFT OIG REPORT MAKES "ESTIMATES" WHICH THE DATA AND STATISTICAL METHODOLOGY DO NOT SUPPORT AND FAILS TO ACKNOWLEDGE THE UNRELIABILITY OF THE INFERENCES.

Upon receipt of the Draft OIG Report, Legal Action consulted Mr. Michael Barndt, Professor of Urban Studies at the University of Wisconsin - Milwaukee and consultant to the Data Center at the Milwaukee Nonprofit Center. We asked Professor Barndt to review the Report and provide his opinion regarding the reliability of the Report's conclusions. The following critique is based on his opinion.

The Draft OIG Report purports to make "estimates" of cases "reported as closed even though no legal services were provided," or which "should have been closed" in an earlier year, or which are deemed "duplicate." As demonstrated *infra*, most of the "cases" identified in the sample are in fact **not** errors. Services were provided in the cases reported and, with one or two inadvertent errors, the open cases were properly open and the so-called "duplicates" were properly coded within the existing LSC CSR Handbook guidance as closing code "e".

But, even assuming that the Draft OIG Report accurately classified every single "problem" case drawn from its samples, the fact is that the inferences and "estimates" that the Draft OIG Report makes are simply *not reliable*. The sample sizes and observed values are too small, and the universes and standard deviations too large, to tolerate the kinds of inferences the Draft OIG Report asserts as reliable "estimates."

Courts consistently demand that statistics on which a factual inference is based be supported by some meaningful analysis of the reliability of the statistics. Inferences based on differences between observed and "expected" values of less than two to three standard deviations are disregarded because the inferences are simply not meaningfully reliable. See, e.g., *Castenada v. Partida*, 430 U.S. 482, 496-97, n. 17 (1977); *Hazelwood School District v. United States*, 433 U.S. 299, 311, n. 17 (1977); *Moulltrie v. Martin*, 690 F.2d 1078, 1082-83 (8th Cir. 1982).

The most serious erroneous inference based on these statistics is the inference "that 198 cases were reported as closed even though no legal services were provided." This erroneous inference is based on the categorization of 3 cases in a sample of 106 cases and extrapolating that percentage to a universe of 6,686 closed cases. The OIG Draft Report fails to note that, under commonly accepted standard deviation analysis applied in courts, 3 cases - **even if all 3 cases were correctly categorized** - is too small a number to permit any extrapolation. The observed value of 3 and the 106-case sample size are too small, and the 6,686 case universe and a standard deviation of 1.71 too large, to permit an expected value inference of 198. At the 95% confidence level, the level commonly

accepted by courts for inferences of fact, the range of extrapolated values is from -26 to 400. Stated another way, one could just as "reliably" infer that the number of "cases reported as closed even though no legal services were provided" was minus -26, or over 400.

Obviously, if one accepts, *arguendo*, that the 3 cases were correctly categorized by the OIG, there was still an infinitesimal error of 3 out of 6,686. The huge range of extrapolated values -- minus 26 to 400 -- underscores the unreliability of making any factual inference from a small sample size of a large universe with so few "problem" cases identified.

The unreliability of drawing inferences from these data is further indicated by a "sensitivity" analysis. Errors in categorizing a single case from the sample result in huge differences in the inferences. Courts commonly test statistical data with a rule of thumb by assuming that the sample results were different in "one or two" cases.

In this sample of 106 cases, a miscategorization of two of the three "problem" cases results in an extrapolation from the 6,686 universe of 62 cases, not the numbers presumed in the Draft OIG Report.

The problems with drawing inferences from this sample are further exacerbated because two of the three "problem" cases were from one advocate in one office. This fact seriously weakens the reliability of an extrapolation to all offices and all advocates -- the premise of the "estimates" in the Draft OIG Report.

III. CASE SERVICE REPORTING

A. Understatement of Cases Is Not Recognized in Report: Legal Action understated its cases by 1,693.

1. 96 Additional Cases in 1997

The Report states: ~~A~~The grantee's 1997 Grant Activity Report included an overstatement of closed cases and an overstatement of open cases.[@] This statement is misleading, unbalanced and results from an overly narrow analysis.

First, as the audit progressed, Legal Action provided the Audit Team with an updated list of 1997 open and closed cases which showed that Legal Action had handled 68 *more* closed and 28 *more* open cases during 1997 than it had listed in its 1997 Grant Activity Report (GAR). *See* Appendix A. The GAR had listed 6,618 closed cases.

The actual number was 6,686. The GAR had listed 2,295 open cases. The actual number was 2,323. The Audit Team and Legal Action agreed that 9,009 was the *correct* number, and the Audit Team drew its case sample from the 9,009. Thus, Legal Action's 1997 GAR included an *understatement* of open and closed cases. The Draft Report completely ignores this.

2. Two or More Cases Counted as One

Second, the case sample (141 cases) examined by the OIG included an understatement of closed and open cases, which understatement is also completely ignored in this Report. This understatement occurs because attorneys and paralegals at Legal Action represent clients on additional transactions or issues which are separate from the initial cases handled for the clients. Because of their heavy workloads and the need to be efficient, the advocates do not open entirely new case files for those transactions or issues. Thus, there is significant understatement of the work done by Legal Action attorneys and paralegals which offsets the alleged overstatement of cases. This fact is not included in the OIG's Report.

The 1993 CSR Handbook recognizes that a single client can generate more than one case:

A client may generate one or more legal cases from a single intake or by returning for additional services at a different point in time.

1993 CSR Handbook, p. 1.

In the following instances taken from the 141-case sample used by the Audit Team, the Legal Action attorney (including Volunteer Lawyers Project attorneys) handled two or more cases for a client but counted all cases as but one case.

a. Case Number PB4279.32

The client in this case requested a divorce. The volunteer attorney filed the divorce action and represented the client in several temporary hearings. In addition, the attorney initiated a separate paternity action for each of the two children. The spouse contested the divorce action and both paternity actions. The volunteer attorney worked

on these three cases for two years, from April 1996 to April 1998. This was a tremendous amount of work.

Pursuant to the definition in the CSR Handbook, this volunteer attorney represented the client on three separate cases, and they could have been counted as three, not one. The problems were not resolved through a single legal process, but rather were resolved through three legal processes and fora: one divorce action; one paternity action and court hearing; and a second paternity action and court hearing.

b. Case Number 97-8268.71

The work done on this file involved three separate and distinct legal problems. The first was the issue of whether the client's family members' immigration status rendered them eligible or ineligible for AFDC and for Food Stamps. In this case, the Legal Action attorney provided advice to the client, investigated what documents were required and negotiated with the case worker on behalf of the family members.

The second case involved the AFDC and Food Stamp rules and regulations as to how to treat fluctuating income in determining appropriate AFDC and Food Stamp benefit levels. In this case, the Legal Action attorney performed extensive investigation regarding the client's income and tax records, contacted the caseworker regarding the proper benefit level, and filed for a fair hearing.

In the third case, the client requested our assistance in obtaining retroactive Medical Assistance benefits. This is a separate body of law from the other two legal problems. The process involved was negotiation with the caseworker and the provision of advice to the client.

Thus, with regard to this client and his family, there were three legal issues: Food Stamps, AFDC and Medicaid, and there were three processes, including legal advice, filing for fair hearing and negotiating with a caseworker. There are three ~~A~~cases in all. Although three case files could have been opened, they were not. Rather, all of the three cases were counted as one by Legal Action staff.

c. Case Number 97-9322

The two cases involved in representing this client were an education case and an AFDC case. The statutes,

regulations and policies governing the education issue were completely different than the statutes, regulations and policies governing AFDC. The processes were also different. In the education case, the issue was whether the child had appropriate placement in a special program, and the forum was a local school district multidisciplinary team. In the AFDC case, the forum was an administrative fair hearing for which Legal Action filed. The AFDC issue was subsequently resolved by negotiating with the state Department of Health and Social Services, and we withdrew the fair hearing request. Therefore, these were separate legal issues involving separate processes and separate fora. They are two cases which could have been counted as two, rather than counted as one in one file.

d. Case Number 96-Ken-340

This case was opened in order to handle an SSI claim for the client. As time progressed, the Legal Action attorney handled a Medical Assistance case and a Food Stamp case for the client. He had 3 separate hearings on all 3 cases. He received 3 separate decisions from 3 different fora in these 3 cases. He did not open two additional files, so Legal Action reported these three cases as one in our GAR.

e. Case Number 97-Ken-61

In this case, the Legal Action attorney initially handled an SSI claim for the client. He also represented her in obtaining Medical Assistance. Two different legal issues, two different processes, two different fora. Therefore, two cases. These were reported as one case in our GAR.

f. Case Number 97-9335

This case was opened in October of 1997, and was counted by Legal Action as one open case. It could have been two open cases. One was an AFDC termination and the other a Food Stamp termination. We represented the client at one hearing on the AFDC, and at a second hearing involving the Food Stamps. There were two separate bases for these terminations and we achieved two separate settlements for this client. Thus, there were two legal processes and two separate resolutions, and this could have been two cases.

g. Case Number 96-6374

The first case involved a series of PFP sanctions involving different months and different bases for sanctions.

We requested and conducted two fair hearings for these sanctions, resulting in one decision. This is one case.

The second case is the brief service we provided to the client in helping her to obtain Medical Assistance. The third case is brief service provided to the client in transferring from AFDC to Kinship Care. Three different legal problems, three different processes, three separate outcomes. This could have been opened as three cases.

h. Case Number 97-8590

This could have been opened as two cases. The first is an AFDC matter wherein the county was budgeting our client's income incorrectly for three separate months. We made two fair hearing requests regarding these errors, and those requests were consolidated into one hearing after which we received one decision. This is one case.

The second case involved child support, child care and unemployment compensation issues which the client faced. In this case, we provided detailed advice in these three areas. This is the second case.

i. Case Number 97-7616

This case could have been opened as three cases. Our client's AFDC and Medical Assistance applications were not processed, and her Food Stamps were terminated as of June 1. We requested one fair hearing for these issues and represented her at one fair hearing, after which we received one decision. This is one case.

The second case involved our client's need for child care in order for her to obtain employment. This supportive service was obtained after extended negotiation, and constitutes negotiation without litigation.

The third case involved obtaining Medical Assistance coverage for one of our client's children, which was done through brief service by calling the county worker.

j. Case Number 97-8363

This case could have been counted as four cases. The first involved PFP and AFDC sanctions during the conversion to the W-2 program. We requested a fair hearing on this and resolved the matter through negotiation as part of the fair hearing process.

The second case involved obtaining a JOBS accommodation for the client because of her disabled son. This was negotiated without litigation.

The third case involved denial of food stamps during August and September. We filed a fair hearing on this, and negotiated this within the context of the fair hearing process.

The fourth issue was Medical Assistance benefits, which we negotiated with litigation in the context of the fair hearing process.

k. Case Number 97-4273

This case could have been counted as two cases. The first issue was our client's need for day care benefits, which we obtained through extensive negotiations with the county. The second issue involved food stamp termination and lack of a Medical Assistance card, for which we requested a fair hearing.

l. Case Number 97-3796

This case could have been opened as four cases. The first case was PFP sanctions for December, January, February and March of 1997 and incorrect budgeting of work-study income regarding AFDC. We requested a fair hearing for this case.

The second case involved PFP sanctions for April, and we requested a separate fair hearing for that.

The third case involved PFP sanctions for May, and we requested a separate fair hearing for that.

The fourth case involved PFP sanctions for November, and we requested a fair hearing for that.

This case is typical of many of our cases, where we perform one act of representation after another for our

clients due to the AFDC-to-W-2 transitional mess.

m. Case Number 96-5521

This case could have been opened as five cases. The first case involved an overpayment of AFDC benefits, which overpayment was negotiated without litigation.

The other four cases were sanctions for June, July, August, September, October and November. Four fair hearing requests were made to contest these sanctions. The sanctions all involved different factual situations, and different issues, so they were separate cases.

n. Extrapolation

Twenty-five additional cases in the sample could have been counted but were not. This is 17.73% of the 141-case sample. Extrapolating to the universe of 9,009 cases, 1,597 additional cases could have been reported in the 1997 GAR. For calculations, *see* Appendix B. Legal Action thus understated its work for 1997 far more than it overstated that work.

3. Many More Persons Served Through Community Education

In addition to the ~~A~~cases@ reported, Legal Action served hundreds of people in 1997 through its community education activities, yet the audit was not designed to capture this major service.

In 1997, Legal Action's records show that its Milwaukee Office served approximately 830 persons through its community education work. As the Milwaukee Office has 61% of the firm's eligible clients, we extrapolate this number to estimate that Legal Action served 1,360 persons firmwide through community education. This major effort is not recognized in the Draft OIG Report.

4. Failure of OIG to Credit Cases to 1996 is Misleading

According to the OIG, the alleged ~~A~~overstatement@ of closed cases in 1997 includes cases which should have been closed in 1996. If that is true, then the Grant Activity Report and CSRs for 1996 *understated* the cases handled

and work performed by Legal Action attorneys and paralegals. The 1996 numbers should be increased to reflect that and the Report should note that the 1996 numbers should be higher. The Report should not ignore all work done on these cases by looking solely at 1997.

The scope of the audit included many 1996 events, including 1996 Board minutes and 1996 regulatory compliance policies. Yet, when it meant crediting Legal Action with work performed, the audit ignored 1996.

5. Failure of OIG to Offset Open Against Closed Cases

Some of the ~~A~~overstated open cases, according to the OIG, were overstated because they should have been closed in 1997. (We don't know how many). If this is so, then the 1997 closed case numbers should have been *increased* by the number of open cases which the OIG asserts should have been closed in 1997. This increase in closed cases will at least partially offset the alleged ~~A~~overstatement of closed cases in 1997. Again, here, the OIG implies that Legal Action is overstating the work it does for clients, when the issue is really one of closing after year-end. There was work done for the client, but the case was not closed in 1997. The OIG claims that Legal Action is ~~A~~overstating its open cases without giving it credit for closed cases which would have been deemed properly counted had they been closed in 1997.

6. Failure of CSR Handbook to Give Full Credit for Group Cases

The reporting of group cases understates the service provided to clients. The 1993 CSR Handbook required that groups be reported as only one case, *even though* the definition of ~~A~~Group Clients was ~~A~~two or more individuals.

A case closed on behalf of a group should be entered on the CSR form as only one case; individual entries should not be made for each member of the group.

1993 CSR Handbook, p. 6, n. 3. It is irrational to treat legal representation which benefits two or more individuals in a group as benefitting but one person. This CSR Handbook provision *required* us to understate our work and the benefits it produced.

B. Inaccurate and Pejorative Summary Statements in ~~A~~Results of Audit Section

The OIG states in its **Results of Audit** that **A[t]he** grantee reported 6,618 cases closed during the year and 2,295 remaining open at year-end. p. 4. Placed where it is, this statement implies that both numbers are inflated, when in fact they are not for the reasons set forth above.

The Report states: **Some** closed cases were reported even though legal services were not provided. *Id.* This statement is misleading and unfair. There are no cases for which no legal services were provided by Legal Action staff.

The Report states: **Duplicate** cases were also reported. *Id.* This statement is also misleading and unfair in its failure to note that most duplications occurred because the volume of callers to the intake paralegal was so high that he did not recall the specific name of or conversation with a caller who did not appear for an appointment and later called in with the same legal problem. The Report makes it sound as though Legal Action deliberately reported duplicate cases, whereas in truth the duplications resulted from the substantial volume of callers to whom we attempt to provide legal services. The Report also fails to recognize the significant work done on many of these so-called **Aduplicate** cases.

C. Case Service Reporting Requirements

In this section, the OIG states that **The** Case Service Reporting Handbook and Grant Activity Report instructions provide reporting criteria for cases. This makes it seem that guidelines and instructions to Legal Action staff were crystal clear and that, because of their existence, there is no reason for what the Draft OIG Report considers to be **Aerrors** in compiling the CSRs. To the contrary, the 1993 CSR Handbook under which we operated in 1996, 1997 and 1998 was far from clear and provided uncertain guidance at best. It also was not sufficiently refined to capture the full extent of services provided clients. For example, **A**counsel and advice could range from counsel and advice which required two minutes of analysis to that requiring several hours of document review and research. Also, the **Aclient withdrew** category was often the only one available even though the attorney was quite far along on the case when the client withdrew, or died.

These were just a few of the problems which we encountered with the old 1993 CSR Handbook.

At the exit conference, the Audit Team stated that the OIG was in discussion with the LSC regarding the timeliness issue, case counts and definitions of terms. They stated that the LSC was receptive to providing more guidance to the programs on these issues, and that the LSC intended to provide suggested guidelines and ask the OIG for comments. Indeed, in November of 1998 the LSC did produce a revised CSR Handbook, with part of its provisions made retroactive to cover all of 1998. This Handbook contained revised definitions of many CSR terms which had caused confusion and difficulty in the past.

On March 25, 1999, the LSC issued 27 *pages* of **A**Frequently Asked CSR Questions and Answers[@] covering CSR issues such as **A**client withdrew[@] and **A**How to report *pro se* workshops.[@] This LSC guidance was, of course, not available in 1997.

Moreover, with regard to LSC guidance, Legal Action was thoroughly monitored by the LSC in 1992, and that monitoring report found no fault with Legal Action's use of CSRs or its interpretation of the CSR Handbook.

D. LSC Uses of Grant Activity Report (p. 4)

The OIG in this paragraph stresses the significance of case statistical information as used by the Legal Services Corporation. While CSR information *is* important, there are other measures of program performance which are just as significant as CSRs, and which are not measured by CSRs.

The most important measure is the quality of legal services provided to clients through Legal Action's representation by attorneys and paralegals. The quality of court advocacy, brief writing and negotiation skills is vital to a client's cause and is a significant measure of program performance, yet the CSRs measure none of these. Similarly, impact litigation and other impact advocacy benefits thousands of low-income clients, yet is not measured by the CSRs.

Finally, successful advocacy in a family's **A**case[@], measured as a single case by the CSRs, in fact benefits several persons. For example, if a Legal Action attorney defends a family of four against an eviction action and keeps that family in the apartment rather than on the street, that attorney has benefitted two parents and two children, yet the work is counted only as one case. We have mentioned how group representation is similarly not fully measured by CSRs.

Thus, while CSRs are one measure of performance and program activities, they are by no means the sole, or even the most significant, measure. Particularly, the failure to close a case within a given calendar year has little to do with the quality of representation provided to clients, and thus little to do with program performance. Legal Action attorneys and paralegals have very high caseloads and represent great numbers of clients, and must prioritize how they spend their time. Once they have concluded their work on a case, they respond to the requests of new clients for assistance, and attempt to close out cases when they can sandwich that activity into their active representation of clients, often at night or on weekends. This means that, during the audit period, closing a case was delayed because of the urgency of client needs, and sometimes cases were not closed in the calendar year in which most of the work was performed on them. This does not mean that the attorney or paralegal or Legal Action performed inadequately with regard to the legal representation of the clients, and in fact is a measure of how much service Legal Action advocates provided to their clients. Therefore, a failure to timely close a case should not be taken as an indication that Legal Action in 1997 overstated the work done for its clients, or as a measure of the productivity Legal Action provided with federal dollars. AUntimely@closing is a narrow, incomplete and inadequate measure of performance and services provided.

E. Automated and Manual Case Management System (p. 4)

The Draft OIG Report describes the fact that, in 1997, the Milwaukee Office was computerized for case management and the Kenosha and Madison Offices were not. The Report also recognizes that Legal Action implemented a law firm-wide relational database for case management, which will be used for case statistical reporting. The Report fails to mention that several of the problems highlighted in the Report were caused by the manual systems in the Madison Office, and that computerization will eliminate future such problems.

In the exit conference, the Audit Team members stated that Legal Action was not the first program that they had encountered with an updated system for 1998 as opposed to the system in place for 1997. The Team also stated that they felt that Legal Action had made substantial improvement in the tracking and closing of cases; that computerization of the system was an improvement; and that the use of the same case numbers for Basic Field and VLP referrals was an improvement.

Surprisingly, the Draft OIG Report contains *no recognition* of these improvements. The Report mentions that Legal Action has implemented the FoxPro client/case management system, but does not characterize this as an improvement or conclude that it will resolve many of the Aproblems@perceived by the OIG.

IV. POSITIVE CONCLUSIONS OMITTED FROM REPORT

Conspicuously absent from the Draft OIG Report are the positive outcomes from the audit.

During the exit interview, the Audit Team noted that a good practice which they had encountered at Legal Action was that, during telephone intake, a query is made regarding citizenship before service is provided, and citizenship is documented on the intake sheet. This good practice is not mentioned in the Report.

In addition, the audit in its scope included an inquiry into whether Legal Action was involved in restricted or prohibited activities. The Audit Team, in a June 17, 1998 letter preceding the audit, requested:

1. A copy of the most recent Certification of Program Integrity (' 1610) provided to the LSC and any policies, procedures or reports related to the Certification; and
2. A copy of Legal Action's Compliance Manual.

A copy of that letter is attached as Appendix C.

On the first day of the audit, the Audit Team stated that they would be inquiring into four areas of regulatory compliance; namely, class actions, prisoners, citizenship and evictions from public housing.

During the audit, the Audit Team requested the following documents relating to regulatory compliance:

1. 7/21: Compliance Manual sections:
 - a. Policy on 1610 Compliance 2/17/98
 - b. Compliance Checklist 2/12/98
2. 7/21: Staff Manual - Restrictions on service to aliens section
3. 7/22:
 - a. Staff Manual - Class Action Policy
 - b. Bylaws: Executive Committee authority to approve
 - c. Executive Committee Minutes regarding approved regulatory compliance policies 10/31/96

- d. Handouts at 10/21/96 Board meeting of proposed regulatory compliance policies and Federal Register edition with regulations and Executive Director's annotations.
- e. Board Minutes of 12/16/96 meeting regarding Executive Committee approval of policies.

On July 23, the Audit Team again stated that they would be looking at compliance with the four regulations. Throughout the audit, many staff members were asked about regulatory compliance. An attorney who had been here just one month was asked if she had the regulations and was familiar with them. She was also asked whether she was aware of Legal Action's handling of any class actions or other restricted cases. The Milwaukee and Madison Office Managers, both nonattorneys, were asked whether they knew of Legal Action's representing clients in drug-related evictions or class actions, or representing aliens or prisoners. Our docketing secretary in Milwaukee was asked the same questions. In all, nine staff members were asked these regulatory compliance questions. All of them told the auditors that we do not engage in restricted representation, because we don't.

At the exit interview, the Audit Team stated that they had found no involvement by Legal Action in restricted or prohibited activities, and stated that the Board of Directors needed to adopt policies regarding current regulations 1617, 1626, 1633 and 1637. Shortly after the visit, the Legal Action Board of Directors did adopt said policies, and they were faxed to the OIG. *See Appendix D.*

Strangely, there is absolutely no mention whatsoever in the Draft OIG Report of the conclusion, beneficial to Legal Action, that, after having been thoroughly audited with regard to regulatory compliance, the Audit Team found no involvement in restricted or prohibited activities. This is a glaring omission, which illustrates how one-sided and narrow is the Report, focussing as it does only on comments critical of Legal Action's performance.

Positive findings were excluded from this Report; only negative findings were included, and they were presented in a misleading fashion.

It should be noted that on May 21, 1999, the OIG issued a separate quality control review report on Legal Action's 1998 audit of the firm's compliance with LSC law and regulations. The OIG's review disclosed that the local auditors had adequately tested Legal Action's compliance with the fourteen key LSC regulations. The auditors had issued an unqualified opinion that Legal Action had complied with LSC laws and regulations for the year ended December 31, 1998. Therefore, the OIG determined that it had ~~A~~reasonable, but not absolute, @

assurance that Legal Action had complied with the LSC regulations. Appendix E is a copy of that OIG Compliance Report.

V. EXAMINATION OF REPORTED CASES

A. *Closed Cases Overstated* (p. 5) should be zero.

The Report states: *We estimated that the grantee overstated closed cases by 377.* In the executive summary, this number is characterized as 6% of the closed cases. The exact percentage is 5.7%. If it were 6%, the number would be 397 cases. Thus, the OIG overstates the percentage of error. In fact, as shown *supra*, Legal Action *understated* closed cases for 1997.

The number of *closed cases overstated* should be zero. Each of the three categories listed in the chart on page 5 should be reduced to zero, and the sum should be zero. There were no closed cases where legal services were not provided; there were no cases incorrectly reported as closed; and the so-called *duplicate cases* were due to a sound systemic reason.

B. *Cases Reported as Closed but Legal Services Not Provided* (p. 6) - None

The OIG *estimates* that 198 cases were reported as closed even though no legal services were provided. This is an extrapolation to the *universe* of 6,686 cases from only 3 cases of the 141-case sample. The unreliability of this method was discussed, *supra*. These cases, whose case numbers were recently provided us by the OIG, were 97-1538, 97-1860 and 97-916. In each of these, legal services were provided.

1. Case Number 97-1538

In this case, legal services were provided in the form of legal information which the applicant could use in an eviction defense. This included an *Eviction Process in Wisconsin* handout, Appendix F; an *If You Are Sued in Court* handout, Appendix G; a *Providing a Termination Notice to the Landlord* handout, Appendix H; the Wisconsin Administrative Code Part 134 relating to evictions; and a *Written Notices from Landlords* handout, Appendix I. Thus, it is not that we did nothing -- provided no service -- to this applicant. We could not undertake representation, but we did render a legal service in the form of information which would help her to proceed *pro se*.

This case should not have been characterized as **A**closed even though no legal services were provided~~@~~in the OIG Report. Services *were* provided.

2. Case Number 97-1860

In this case, the Legal Action attorney enclosed a *pro se* handout, **A**Assistance in Filing Your Own Divorce or Handling Your Other Family Law Problem~~@~~(Appendix J), with her letter stating that we could not represent the applicant. Here again, a legal service was provided in the form of legal information which the applicant could use should she desire to proceed *pro se*. It is incorrect to state that **A**no legal services were provided.~~@~~

3. Case Number 97-916

In this case, the Legal Action attorney spent time interviewing the applicant about her case, answered questions about Wisconsin law and discussed with the applicant two ways to file for divorce -- separately or jointly. This is the provision of legal services, even though we ultimately advised the applicant that we could not provide full representation. It is inaccurate to state that this case was closed with no legal services provided.

None of these three cases were **A**phantom~~@~~cases -- cases opened and closed after a telephone call handled by a receptionist, with nothing done to assist the applicant. They were not opened in order to inflate our case numbers. In all three cases, services were provided. Thus, no cases in the 141-case sample were closed without legal services provided, and the number extrapolated to the **A**universe~~@~~of 6,686 cases should be 0, not 198.

Thus, on page 5, 198 should be eliminated, and 377 reduced to 179.

C. Incorrectly Closed Cases

The Report states

The grantee incorrectly reported 119 cases as closed in 1997 that should have been closed in prior years. The error was isolated to the Madison Office. In the autumn of 1996, the Madison branch office's staff was reduced at the same time the office was relocating. These circumstances led to a delay in capturing some 1996 case statistical data. As a result, 119 cases remained open even though legal services were no longer being provided.

In fact, none of those cases remained open in 1997. Every one of the 119 cases was closed in 1996, the year that legal services were provided the clients. Because of the severe staffing reduction effected by the Congressional funding cuts and described below, Legal Action's skeleton staff was not able to *tabulate by hand* the demographic and case closing data in time to get that data into the 1996 GAR. This meant that Legal Action was not credited in 1996 with the considerable amount of work which had been done for 119 clients.

Legal Action was not permitted to ignore this data; it was *required* to report it. We had no choice but to include it in the 1997 CSRs.

The information should be compiled quarterly; it should be submitted to the Corporation annually in hard copy and/or annotated format.

* * *

Information on clients and cases will be submitted to LSC on the annual CSR form.

* * *

CSR reports must be prepared and submitted by each program annually.

1993 CSR Handbook, pp. 1-2.

This was not fraudulent overcounting. We *did* the work. We provided the service. The work was simply tabulated in January of 1997 rather than in December of 1996. It is absolutely not true that 119 cases remained open even though no legal services were being provided. Those cases were closed in 1996.

Legal Action had a good reason for not tabulating these cases in 1996: The Congressional funding cut. In late 1996, the hand-tabulation of statistics by the Madison Office Manager was a laborious and time-consuming process. She would collect all of the intake sheets for a month, sort them into demographic categories, e.g. white males age 18-59, white males 60 and over, white females 18-59, etc., then add them up. She would then enter the totals in the appropriate box in the LSC Statistical Case Service Report (CSR), e.g. 26/53" for total white males and females. She would then re-sort the intake sheets by legal problem code and case closing code, e.g. Divorce/separation/annulment - brief service other than counsel and advice and total those, e.g. 4. She would

then total all closing reasons for each legal problem code, e.g. **A**divorce/separation/annulment@ = 18. She would also total all of the closing codes in a vertical column, e.g. **A**counsel and advice@ for each legal problem code, e.g. **A**Total Family@ = 20, and then for all cases. She would then send these forms to Legal Action's Milwaukee Office for inclusion in the entire firm's Case Service Report, part of the Grant Activity Report. An example of a completed hand-tabulated form for one of the six counties is attached as Appendix K.

This is what, because of the many additional duties which she assumed because of the Congressional funding cut, the Office Manager was simply unable to do by December 31, 1996.

While the OIG Report mentions the extraordinary circumstances which produced this delayed case reporting, it does not on page 6 note that this was a one-time occurrence and unfairly includes this number as **A**overstated@ closed cases. These are *not* overstated closed cases, as work was done on each of those 119 cases in 1996. The only way to conclude that these are overstated is to look only at one year without looking at anything else about the operation of this law firm, including activity in prior and subsequent years -- a very artificial and unreasonable way of examining our activity and work. And, as we said on page 9, *supra*, the Audit Team looked at 1996 activity in other areas, including whether we had complied with our regulations.

In addition, the Report fails to fully set forth the extraordinary circumstances in the Madison Office, or to note that those extraordinary circumstances were brought about because of a radical reduction in funding by the Congress in 1995. These circumstances were explained to the OIG in a memorandum from John Ebbott to Anthony Ramirez dated July 23, 1998. *See* Appendix L.

The compilation of the CSRs and other statistical data for the end of 1996 and early 1997 took place in the context of a severe staff shortage brought about by the 29% reduction in Legal Action's LSC funding. These funding cuts were enacted in 1995, and were effective beginning in January of 1996. Because Legal Action had maintained a reserve fund for such a catastrophe, we were not forced to reduce staff immediately. However, by the autumn of 1996 we were forced to reduce the Madison Office's staff by attrition and layoff. This created a secretarial and docketing crisis in that office.

Prior to this staff reduction, the Office Manager in the Madison Office, Sandy Potts, was responsible for

compiling, through the above-described process, all of the data for the CSRs in that office, which serves 6 counties. With 54 legal problem codes, 11 closing reasons, 6 ethnicity codes, 2 gender codes, 3 age groups and 6 counties, Ms. Potts was responsible for tracking and totalling 3,780 CSR reporting items each month, or 45,360 such items each year.

When the office receptionist resigned on October 3, 1996 and we could not replace her due to the funding cuts, the other secretaries, including Ms. Potts, had to cover her receptionist duties. When the Family Law Paralegal resigned on November 1, 1996, and we could not replace her due to the funding cuts, the secretaries had to assume the family law document preparation that the paralegal had been doing.

When we laid off a legal secretary on November 15, 1996, again due to the funding cuts, the sole remaining secretary and Ms. Potts had to cover the duties of all three departed support staff. After operating this way for about six weeks, we concluded that we could not continue with this small a support staff, and that we had to recall a secretary and look at reducing attorneys or paralegals in order to absorb the funding reduction. We recalled the secretary on January 6, 1997, but the office had been without her services since November 15, a period which included the year-end CSR work.

Also on November 15, 1996, a staff attorney was laid off due to the funding cuts, and his cases had to be closed and otherwise absorbed by the rest of the office, including their processing through the CSR system.

The LSC funding cuts also forced us to relinquish 37% of our office space, effective January 1, 1997. This meant that we had to move during November and December of 1996. Between November 20 and January 1, Ms. Potts and the lone remaining secretary were responsible for packing up almost all of the offices on one floor, supervising the construction needed to separate the relinquished space and attempting to perform their own duties plus those of the departed support staff. This, of course, included Ms. Potts' CSR recordation and tabulating duties. In addition, almost all of the offices of the other Legal Action staff members were packed and moved.

This included their files and the intake sheets which Ms. Potts needed for hand-tabulating. This made timely recordation of CSR data impossible. During this period, Ms. Potts came in early, worked all day with no lunch and did not leave until 5:30 or 6:00 p.m. each day. She worked extremely hard, and could have done no more.

The 1993 CSR Handbook states that one of the steps which a program should take is to **A . . . Determine the most economic and effective method of collecting and aggregating the data to produce the reports.**⁶ 1993 CSR

Handbook, p. 2. In these circumstances, aggregating the CSRs in January and reporting them in the 1997 report was the most economic and effective option we had available.

Given all of this, it is not appropriate to characterize these 119 cases as overstated cases, or as cases we reported in 1997 on which no work had been done. This characterization is misleading and inaccurate, and criticizes Legal Action for trying to cope with a drastic staff reduction imposed by the Congress. This was a one-time occurrence, was not systemic, was partly due to the manual process which we no longer use, and these cases should not have been included in the Report in this negative manner. The memorandum explaining these circumstances was faxed to the Assistant Inspector General for Audit on July 27, 1998.

Had we had sufficient funding and staff to close these cases in 1996, the CSRs for 1996 would have increased, and therefore it is evident that we *understated* our work for 1996.

These 119 cases should be eliminated from page 5 of the OIG Report, and the total ~~A~~Closed Cases Overstated~~@~~ reduced to 60.

D. So-Called ~~A~~Duplicate Cases~~@~~

The OIG Report uses the phrases ~~A~~duplicate cases~~@~~ and ~~A~~duplicate counting~~@~~, which phrases imply that Legal Action was counting one case as two, and thus deliberately inflating its numbers. This is not so.

The Report also refers to this as ~~A~~incorrect reporting.~~@~~ That our reporting was incorrect is far from established.

We reported many of these cases closed as ~~A~~client withdrew or did not return,~~@~~ which is not only what actually happened, but is also logical and consistent with the definition in the 1993 CSR Handbook. Specific guidance for situations where accepted clients miss appointments was not provided until March 25, 1999. Even under these guidelines, it is far from clear that our practice was improper. Clearly, there was nothing in the 1993 CSR Handbook prohibiting Legal Action's practice described below. Thus, a conclusion that these cases were ~~A~~duplicate counting~~@~~ and ~~A~~incorrectly reported~~@~~ in 1997 is insupportable.

In a number of these cases, an applicant for service would call our Milwaukee Office and undergo ~~A~~prescreening~~@~~ by our VLP paralegal, Don Tolbert. The purpose of this ~~A~~prescreening~~@~~ was to determine income eligibility,

citizenship status, and whether the applicant's legal problem fell within Legal Action's case acceptance criteria.

Mr. Tolbert would ascertain this by asking about the applicant's income, expenses and assets, and by eliciting basic information about the applicant's legal problem -- a kind of preliminary interview.

If the applicant was eligible and his problem fell within our case acceptance criteria, and he desired that Legal Action represent him, Mr. Tolbert would Aopen@ a file for him and make an appointment for him to see an attorney for a more detailed interview. At this point, we considered the applicant a client of the law firm. It made sense to open a file for him then, so that the case would already be Aopened@ in our system when the attorney saw him. The case would already be assigned a number and the attorney would have the intake sheet with Mr. Tolbert's notes for review.

It would have been less efficient to wait to Aopen@ the case until the attorney had provided legal services to the client. Had we done this, the attorney would have had to complete the intake sheet, send it out to our docketing staff, and await the file's return. With the file already open, the attorney could skip that step and begin work on the Aopen@ case immediately. So -- it made sense to open the file when we did.

Some clients decided not to proceed with the case, and did not keep their appointments with our attorneys. When this occurred, we had to take *some* action with regard to the file, if we did not want to keep it open indefinitely.

Cases open indefinitely are not favored by the LSC or OIG; timely closing is. We could not very well Aunopen@ the file -- we had no process for this, and it frankly never occurred to us to Aopen@ and then Aunopen@ cases.

The logical step was to Aclose@ the file. The reason for closing it was obviously that the client withdrew or did not return: CSR category (e).

The client in fact *had* withdrawn. He called, told us his legal problem, told Mr. Tolbert he wanted us to represent him, and then decided not to proceed -- he withdrew.

The CSR Handbook (Revised 1993) in effect during 1997 defines Aclient withdrew or did not return@ thus:

A case resolved where the client failed to return to the program during the course of the representation and could not be contacted by the program. *It also includes case resolutions where the client decided not to proceed with the case, e.g., client in an eviction case decided to move out instead of proceeding with legal action.*

(Emphasis supplied). This definition covered our situation pretty closely, and thus (e) was the most logical

closing code.

Legal Action expended resources on the client in the form of Mr. Tolbert's interview time and expertise and the work of our docketing staff. This was not a phone call answered solely by a receptionist who made a quick referral somewhere else. We were unable to provide legal services only because the client withdrew or did not return.

We still see nothing wrong with this procedure. The procedure we have adopted since the audit, that of marking "Rejected" if the client does not appear for the appointment, is an artifice constructed to avoid what the OIG views as a problem. In fact, we did not reject the client -- we *accepted* him and his case. He simply withdrew and did not return. Nevertheless, we are presently complying with the 1998 CSR Handbook and the 3/25/99 guidance FAQs.

The problem perceived by the OIG, which arose when the same client called again with the same issue and we opened a second file, which problem we still consider *very* minor and unrelated to quality client service, was never apparent to us. This is because, in most cases, with our very high volume of cases, Mr. Tolbert simply could not remember all of the clients for whom he made appointments, who subsequently withdrew and then called again with the same problem. Once he completed an intake sheet and set the appointment, he did not retrieve the intake sheet to refresh his recollection as to who had called. Rather, he sent it to docketing for opening and routing to the attorney. Thus, when the same client called again some time later, Mr. Tolbert would open another file, not being aware that that client had called before with the same problem.

If Mr. Tolbert had searched all past intake sheets when each client called, he would have been able to serve far fewer clients. He would have wasted resources performing incessant records checks rather than using resources wisely on client service. And, had we *discovered* that the same client had called before, he would still have been required to "open" another file because our computer and administrative system in 1997 did not enable us to reopen a "closed" file. An occasional second file on the same matter is an understandable shortcoming of a system which must efficiently handle massive demand; it is *not* an attempt to fraudulently inflate numbers to overstate the legal services which we provide clients.

At that time, Mr. Tolbert did not have computer software which could track this kind of recurring client pattern or reopen closed cases. We now have a FoxFire system which permits him to track and eliminate Aduplicate@ cases. This improvement, which was well underway at the time of the audit, is not mentioned in the Draft OIG Report.

Moreover, in many of the Asecond@ cases on the OIG's Aduplicate@ list, very significant work was done for the client, a fact not reflected in the OIG Report. In ignoring these cases where much work was done, the OIG Report *understates* the service provided much more than the Aduplicate@ cases overstate it. Finally, some so-called Aduplicates@ were caused by inadvertent errors which will occur in any system, human or technological, and were insignificant and should not have been counted.

A discussion of the so-called Aduplicate@ case tandems and what occurred with regard to them is attached as Appendix E-1.

We want to highlight three tandems here:

1. 91-3422 and 91-3607

The OIG's data fax states that Legal Action could not locate the tandem of 91-3422 and 91-3607. We have located those cases, and they are not duplicates. They concern two separate unemployment compensation matters, involving two different employers and two different sets of facts.

2. 97-8433 and 97-8823:

In 97-8433, a file was opened and an appointment scheduled for September 2. The client did not appear, so the file was timely closed as Aclient withdrew.@ The client called on September 9, file 97-8823 was opened and an appointment was scheduled for September 16. The client appeared at the appointment.

Legal Action represented this client and did a tremendous amount of work on the case. The file is 3 1/2 inches thick. The Legal Action attorney, Kris Hirsig, who represented this client, obtained extensive medical records

from one clinic and analyzed them, obtained extensive school records and analyzed them, and obtained additional medical records from a hospital and analyzed them. She sent a questionnaire to the client's teacher, obtained a response and analyzed that questionnaire. She also sent a physician questionnaire to the client's physician. Ms. Hirsig used all this to prepare for the client's administrative hearing.

After the initial hearing in this case, Attorney Hirsig continued to gather medical and school information in preparation of the client's case. She then represented the client at an administrative hearing regarding the client's disability. After the hearing, Attorney Hirsig continued to gather medical records and school documentation in order to strengthen the client's case. Throughout this period, Attorney Hirsig was in constant contact with the client and his family, not only by telephone but also through continuous correspondence with them. This Aclient maintenance@itself takes a great deal of time and effort. After eight months, the Administrative Law Judge issued a decision and Attorney Hirsig closed the case in the spring of 1998.

None of this work is reflected in the OIG Report -- in the OIG's view, this is merely a Aduplicate case,@nothing more. In so treating it, the OIG greatly *understates* the legal services provided to this client and his family.

3. 97-9326 and 97-9769

In 97-9326, the client withdrew on October 23 and the file was closed as Aclient withdrew.@ On October 30 the client called again, Legal Action staff did not remember him, 97-9769 was opened and the client was interviewed on November 4. This case, 97-9769, also involved considerable work and an agency decision, yet that is ignored in the OIG Report.

In this case, a Legal Action attorney, again Kris Hirsig, obtained the client's school records. Attorney Hirsig spent considerable time preparing for the disability hearing in this matter, and represented the client at the hearing. In preparing for the hearing, Attorney Hirsig contacted and prepared witnesses to testify at that hearing, and then prepared direct examination of those witnesses and conducted that direct examination at the hearing. She persuaded the Administrative Law Judge to keep the record open for submission of additional school records, and obtained and submitted those. She filed a letter brief with school records as enclosures to support her argument.

In May of 1998, she obtained a decision favorable to our client. The Administrative Law Judge found our client to be disabled and restored his Social Security disability benefits, which had been terminated.

There is no mention made in the Draft OIG Report of all of the work that Attorney Hirsig put into this case, or

of the critically important and successful outcome of this work for our client.

4. So-called Aduplicates@ should be eliminated from Aoverstated cases@ list.

There were sound systemic reasons for these 16 so-called Aduplicates@ in 1997, both volume and the inability to reopen cases. The new computerized client/case management system which Legal Action has installed now allows the instantaneous listing of all cases assigned to a single client. It also allows the reopening of old cases. These 16 should not be considered Aduplicates@ and should not be extrapolated back over the 101-case Auniverse@ to arrive at 60 Aduplicate@ cases.

Therefore, on page 5, the number 60 should be eliminated and the total Aclosed cases overstated@ should read A0".

E. Open Cases Incorrectly Reported

The OIG states that it estimated, based on a review of 35 sample cases, that Legal Action overreported open cases by 390, or 17%. To the extent that these open cases should have been closed in 1997, this would *increase the closed case count for 1997 and offset the alleged Aoverstatement@ of closed cases*. In other words, if 300 cases should have been closed in 1997, these 300 cases should be subtracted from the alleged 377 Aoverstated@ closed cases, leaving only 77 Aoverstated@ closed cases for 1997. If those open cases should have been closed in 1996 or a prior year, then Legal Action's closed case numbers for those prior years should be adjusted to give Legal Action credit for those cases. It appears that the audit was designed with a scope too narrow to permit this crediting. The audit can subtract from 1997, but not add to 1996. This is unfair and unbalanced.

The Report states that some open cases were duplicates, in that they were reported more than once. It does not say how many of the cases fall into this category. If the sample is 35 cases, then 17% is 6 cases which were allegedly Aoverreported.@ The Report does not indicate how many of those 6 were Aduplicates,@ but it appears to us that only one was.

1. Case Number 97-MIG-7562.73: Properly open in 1998.

As we understand the Draft OIG Report, the OIG's position is that this case should have been closed in 1997.

This is not correct. On December 4, 1997, the Legal Action attorney, Kevin Magee, sent a letter to the client in Eagle Pass, Texas, requesting that she send him information as to when she and her husband were married for purposes of calculating eligibility for food stamp benefits. In that letter he told her that, once he had received the information from her, he would try to resolve the dispute with Human Services. If Human Services did not agree to pay the correct amount of food stamps, he would file a lawsuit in Wisconsin to obtain the benefits owed. Thus, as of December 1997, this case was very much open and Attorney Magee was waiting to receive information from the client. Attorney Magee did not expect to receive a response to his letter until late December at the earliest, and more likely in January or February of 1998. Attorney Magee frequently receives responses from migrant farmworker clients two or more months after he sends them letters, and thus he normally would have given this client three months to respond to his letter.

Attorney Magee may have acknowledged to the auditors that he should probably have closed this case by the time of the OIG audit -- July 20, 1998 -- but he did not state that the case should have been closed in 1997. He did not close this case by July of 1998 because in the spring and summer of 1998 he was performing two jobs, Director of the Migrant Project and Managing Attorney of the Madison Office, and had multiple duties, including preparing for the OIG audit.

Therefore, this case should not have been included in the list of open cases incorrectly reported.

2. Case Number 97-DC-473: Properly open in 1998.

This case is a divorce case which was opened on March 11, 1997. As of December 22, 1997, the Legal Action attorney, Susan Pearsall, was in the midst of processing this divorce. She was intending to draft a marital settlement agreement and a financial disclosure statement for the client. It would thus not have been appropriate to close this case as of December 31, 1997. On July 20, 1998, (the date the audit began), Attorney Pearsall wrote the client's spouse inquiring as to why he had not signed the proposed marital settlement agreement and returned it to her. The final hearing in the divorce action did not occur until November 23, 1998. Attorney Pearsall sent the Findings of Fact, Conclusions of Law and Judgment of Divorce to the court on December 21, 1998. Attorney Pearsall wrote the client on January 5, 1999 notifying her that the court had mailed her the final copy of the signed Findings of Fact, Conclusions of Law and Judgment of Divorce, advising her of steps that she should consider now that her divorce was final and informing her that her file had been closed.

Since the divorce was not obtained until late 1998, it is unclear why the OIG concluded that Legal Action should have closed it in 1997.

3. Case Number 97-9322: Appropriately open in 1998.

This case involved AFDC and Food Stamp benefits for our client. We had a separate case in which we were attempting to reverse a termination of the client's Social Security benefits. The outcome of the Social Security case would have an effect on the level of Food Stamps to which our client was entitled. The Social Security issue had not been decided by the end of 1997, so the Legal Action attorney, Larry Dupuis, kept the Food Stamp file open into 1998 in anticipation of working on it when he received the Social Security decision. Attorney Dupuis did not state that the case should have been closed in 1997, but did state that it ~~A~~probably could have been closed@ by the time of the OIG audit -- July 20, 1998. Thus, 97-9322 is not an incorrectly reported open case. It was correctly reported as open through the end of 1997.

4. Case Number 96-6551: Appropriately open in 1998.

While perhaps it could be argued that this case should have been closed in 1997, at that time we were leaving a number of cases open in order to monitor them. With the massive numbers of cases that we took on as Wisconsin's welfare reform made the bumpy transition from AFDC to W-2, we made a conscious decision to monitor the cases which had been problems in the Pay for Performance program in order to ensure successful transfer to W-2, and to ensure that our clients received proper assignments under the W-2 program. This particular client had experienced numerous problems while she participated in Pay for Performance, and we left the case open in order to ensure that we could assist her in making the transition to W-2. Therefore, there are very solid reasons why this case remained open into 1998.

5. Case Number 91-1047: Inadvertently misfiled, so not closed.

This is an unemployment compensation case. We won for our client at the administrative hearing stage. The employer appealed, and we won again for our client before the Labor and Industry Review Council. Thus,

although this case was open a long time, we achieved what was important for our client. Nothing remained to be done on this case -- our client received his unemployment compensation benefits. We feel that we must repeatedly stress that it is this -- quality representation of the client and achieving his objective -- that is most significant, not how long before the file is closed once the case is done.

In 1991 or 1992, this file was inadvertently misfiled in our open case files before the Legal Action attorney was able to close it. As he was busy serving other clients, he did not spend the tremendous amount of time necessary to track it down until, responding to the Audit Team's request, he searched through every drawer of every file cabinet. The file stayed in Aopen@status this long because it did not turn up to be closed. On the one hand, it was carried in our reports as an open case, but on the other hand, we did not take credit for it as a Aclosed@case.

6. Case Number 97-3077: Inadvertent Error.

This file was a result of inadvertent error and not an attempt to overstate our open cases. The file on this client was opened on December 27, 1996 as MW-96-6566.38. At that time, the attorneys in our Family Law unit wanted to retain original intake sheets in their office so that they could bring them to the Acase acceptance meeting,@ without having to wait for the original intake sheets to return from the docketing process. Therefore, they would photocopy the intake sheet and send it to docketing for a conflicts check. This practice was an effort to better serve clients.

In this case, a copy of the MW-96-6566.38, an intake sheet with a preprinted number, was sent to docketing to be opened. In early 1997, another copy of that same intake sheet was erroneously made and sent to docketing, where it was opened as 97-3077, with the number MW-96-6566 crossed out. This number was crossed out because the docketing clerk was opening the file in 1997, and was supposed to use 1997 numbers. The Family Law attorney, having kept the original intake sheet, did not realize that there were two numbers assigned to one open case because she did not receive the second intake sheet. To her knowledge, she was handling one open case, which was MW-96-6566.

While this duplicate intake sheet is inadvertent and inconsequential, we nevertheless changed our system after the audit so that the original intake sheet, rather than a photocopy, goes from the Family Law Unit to docketing.

Our new computer system now assigns unique numbers to each case, which has eliminated this Aalready-numbered sheet@intake problem.

7. Extrapolation

Four of these cases were properly open at the end of 1997. Even assuming that the other two were not, and should have been closed, this is only 5.7% of the 35-case sample. Extrapolated to the universe of 2,295, this means that only 130 cases were incorrectly open. The number of cases open in the Executive Summary (p. 1) should be increased from 1,905 to 2,165, and the 130 cases that arguably should have been closed should be added to the 1997 closed case number, and should reduce the Aoverstated closed cases@number (p. 5) to 247 ($377 - 130 = 247$).

VI. OTHER CASE MANAGEMENT ISSUES

The Report speaks of Ainternal control problems.@

A. Storage - 3 Missing Files

The Report states that Legal Action could not locate files for 3 of 85 sample cases selected from the Milwaukee Office.

As the Report notes, all three of these cases were closed, and thus it is not the case that Legal Action was not able to locate *open* case files, a much more serious matter. Because of the large number of clients served by Legal Action, and the concomitant volume of paper generated by that service, since 1981 we had used Business Records Center, an off-site business storage company, to store our files, rather than to store them at Legal Action's offices. (As of mid-1998, Legal Action had 3,849 cubic feet of stored records.) This company provides file storage services to many of the largest businesses and law firms in the Milwaukee area, such as vonBriesen, Purtell & Gibbs; Fleet Mortgage; Firststar Bank; Johnson Controls; Mobil Oil; and Laughlin Constable. In mid-1997, Business Records Center was bought out by Iron Mountain, the country's largest records storage firm.

Legal Action retains closed files in our offices for the current year and two previous years.

These three files were *not* lost in our office. Generally, during the first quarter of a year, closed files for cases which were opened over two years ago are sent to storage. For example, closed 1996 files were sent to storage on or about 1/98. Closed files are filed in the case number order in which the cases were originally opened. Cases still open past their intake year are sent to storage when closed to be interfiled with the other closed files from that intake year.

Pursuant to the Audit Team's request to review a random sample of our files, we instructed the off-site storage company to retrieve and deliver those files which are stored at its building. Company personnel informed us that they were not able to locate three of those files. Numerous contacts were made with Iron Mountain both during and after the OIG visit to follow up with them as to the status of locating missing files.

We provided the Audit Team with a letter from this company, Iron Mountain, which stated that the records were received by that company. Therefore, the inability to locate these three files was not due to any malfeasance on the part of Legal Action's staff, but rather was solely the fault of the records management company. It is not a problem with Legal Action's internal control.@

Prior to 1998, we had absolutely no notice that this company was not competent and professional in its work.

We believe the problem with these missing files was a transitional problem during the changeover to the new owner. Please see Legal Action's response to OIG recommendation #6 for a listing of the steps Legal Action and Iron Mountain have taken to avoid any future problems.

B. Clients Allegedly Overincome and Nonpriority

The OIG Report concludes that Legal Action provided legal services to three clients who should not have been assisted, out of a sample of 141 open and closed cases. The Report states that two clients' income exceeded LSC limits and one client's case was outside Legal Action's priorities. These cases are as follows:

1. Case Number 97-3644.01

This case involved a client who paralegal Don Tolbert screened in February of 1997. The family size was one,

the monthly net income was \$885.00. According to the income guidelines in 1997, the client was over A (\$806.00) by \$79.00, but well under B¹. No A²over A, under B² form was in the file; however, Mr. Tolbert requested debt information and listed three debts on the intake sheet, the maximum number of debts the computerized intake sheet system could hold at that time. The client was told to give the volunteer attorney a complete list of debts when he arrived for his appointment. The attorney interviewed the client, and noted that he had A²excessive debt,² thus bringing the client under A for eligibility purposes. The attorney then gave him advice on bankruptcy and judgment procedures. The client *was* eligible for Legal Action³s services. The OIG report is not correct in stating on page 7 that the client A²should not have been assisted.²

2. Case Number 97-3175.01

This case involved a client who Mr. Tolbert prescreened for bankruptcy on 1/16/97. The family size was one, the monthly net income \$873. According to the income guidelines in 1997, the client was over A (\$806.00) by \$67.00, but well under B. No debts were listed at the time of the intake. Many clients cannot articulate what debts they have or how much debt they have. They only know that they are getting harassed for their debts and want it to stop. In this case, the client would have been told to prepare a list of debts to bring to the appointment with the attorney. Mr. Tolbert would then complete the A/B form, if warranted. In this case the client never appeared for his appointment, so no further debt calculation was done and no A/B form was completed. Had he appeared, it is *very* likely that his debts would have brought him below the maximum income limit. It was thus appropriate to serve him to the extent of setting an appointment at which his debts would have been ascertained and bankruptcy discussed. We try to serve people at Legal Action, not turn them away prematurely, and we believe that this was permitted under the 1993 CSR Handbook.

3. Case Number 97-DC-609.94

This case, we are assuming, is the one referred to on page 7 of the OIG Report as A²one client³s case was outside

¹ AA²is 125% of poverty.

² AB²is 187 1/2% of poverty.

the grantees' priorities.⁴⁰ This was closed as counsel and advice on a .94, which is a tort.

What in fact occurred with regard to this case is that the Legal Action attorney, Kevin Magee, *declined* to accept the case for extended representation because the case was not within our priorities. The case file reflects that Attorney Magee advised the client that we could not represent her, and that there was no volunteer lawyer available to assist her. His letter states: "As I explained when we spoke, our office does not handle this type of lawsuit, and we cannot represent you in this case."⁴¹ Attorney Magee sent the client information about small claims court and about suing to recover money. Thus, he provided a modicum of counsel and advice, but specifically declined to represent her because her lawsuit was not within our priorities.

We did not in 1997 view our priorities as precluding us from providing a very modest amount of counsel and advice to income-eligible clients who requested assistance. Rather, our priorities guided us in determining those cases to which we would commit significant resources, as with extended service. This case was handled appropriately by Attorney Magee and should not have been included in "Internal Control Problems" in the OIG Report. We read the 1993 CSR Handbook as not prohibiting this service.

This case, together with cases 97-1538, 97-1860 and 97-916, discussed in Section II.B., *supra*, raises the questions of whether we could, in 1997, have provided a small degree of legal assistance in the form of legal information to all who called and, if so, whether we could be credited for the work and time involved in providing that assistance. At Legal Action, we tried not to send anyone away empty-handed, even if we could not take her case because of income or "case acceptance criteria" ineligibility. We believed that it benefitted the caller, Legal Action and legal services in general to provide the modicum of assistance constituted of legal information handbooks and forms. It was not clear that the statute or regulations precluded this. While modest, this provision of assistance represented an expenditure of resources in the form of the drafting of materials, the interview with the caller and the mailing of the materials. We believed that we should be permitted to count and receive credit for these services as a legitimate use of LSC funds.

Now, the 1998 CSR Handbook and the March 25, 1999 FAQs make clear that we cannot provide this assistance, and we are no longer doing so.

C. Asset Eligibility Documentation

The Report states:

Asset eligibility documentation was not available for fifty (35%) of a sample of 141 cases. Grantee staff told us that in some cases applicants were asked about their assets when they applied for assistance. In other cases, the grantee relied on asset determinations made by a state government agency. The staff presented no documentation to substantiate that these asset eligibility determinations met requirements.

1. Documentation of Assets Was Not Required in 1997

Until the LSC issued the 1999 CSR Handbook, there was no specific requirement for documentation of client assets. The 1993 CSR Handbook, in effect at the time of this audit, does not address asset documentation. The regulation, 45 C.F.R. Part 1611, does not contain such a requirement; nor does the Audit Guide's Compliance Supplement or any LSC program letter. The only documentation required is when the Executive Director waives the asset limits.

Thus, any failure by Legal Action staff to document assets should not be treated as an exception or problem under the A substantial correctness@ test.

2. Legal Action Asset Determination Procedures

As required by the regulations, Legal Action's Board of Directors has established asset ceilings to be utilized in determining eligibility for services. The asset ceilings in effect as of April 21, 1997 were, for a family of one, \$4,000, family of two, \$7,000; family of three, \$10,000; and \$2,000 additional for each additional family member. Legal Action had also adopted a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. 45 C.F.R. ' 1611.7(a). Under Legal Action's procedure, a staff member had the option of declining to serve a person whose income is below A if the client had assets above Legal Action's asset ceiling.

If a client indicated that her income source was one of the categorical public benefits programs such as AFDC, W-2, Medicaid, Food Stamps or SSI, the Legal Action staff member neither inquired nor recorded assets because the asset eligibility levels for those categorical programs were lower than Legal Action's asset ceilings. Thus, we knew that there were no assets that would render that client, who had income below A, ineligible for our services.

For clients other than those receiving categorical public benefits income, most Legal Action staff members conducting the intake interview would ask a general assets question, such as “Do you have bank accounts, stocks, bonds, a second car, household furnishings of significant value, etc.?” If the client answered no, which was generally the case, the advocate would not enter anything under “Assets” on the intake sheet.

The other permissible procedure was essentially a rebuttable presumption that a client who was under the ceiling did not have assets exceeding the ceiling. Thus, for example, if a client said that his income was \$150 a week because his business was going under, or the income was from interest or dividends, that volunteered information would raise a question in the advocate’s mind as to the value of the business or other assets, and the advocate would ask further questions about the value of these, which are highly unusual assets for our clients to possess. If the interview then produced information that the applicant for service possessed assets exceeding the ceiling, an entry *would* be made in the “Assets” section of the intake sheet. If the interview did not disclose such information, no asset information would be entered.

These were the procedures by which assets were used to determine eligibility at Legal Action of Wisconsin. They are consistent with 45 C.F.R. § 1611.7(a).

3. Legal Action Staff Checked Asset Levels

The OIG Audit Team verbally indicated during the exit interview that, based upon their interviews of intake staff, it appeared staff was checking for client asset levels but were just not consistently making a notation on the intake sheet.

4. Number of cases should be reduced by 28.

The number of 50 cases reported by the OIG is too high. This number should be reduced by the 28 cases for which there was good cause not to list the assets on the intake sheet. These cases are as follows:

- a. **Case Number 97-3348:** In this case, the client was receiving AFDC, so had to have assets below Legal Action’s maxima.

- b. **Case Number 97-4118:** The client in this case had no income and was 19 years old, so the staff attorney made a rebuttable presumption that the client had minimal assets.
- c. **Case Number 97-3203:** This intake was done by a Volunteer Lawyers Project attorney. Our experience with private attorneys assisting us on intake is that they will obtain the income, but often will not do an asset notation. As they are volunteers, we cannot require them to make these notations as we are currently requiring staff to do.
- d. **Case Number 97-4316:** In this case, the client was a child receiving SSI. The SSI asset levels are above Legal Action's so when the staff attorney saw that it was an SSI client, she knew that his assets were below Legal Action's maxima.
- e. **Case Number 97-3859:** Here the client was receiving SSI, and therefore the assets were below Legal Action's maxima.
- f. **Case Number 97-9208:** Again, the client was receiving SSI, and therefore his assets were below Legal Action's maxima.
- g. **Case Number 97-9102:** This case went through prescreening, where the Legal Action paralegal always asked for assets. At that time, in 1997, if there were no assets, the computer did not print anything in the Assets@ portion of the intake sheet. Since then, we have changed the program so that now, if there are no assets, the computer prints ANo Assets.@"
- h. **Case Number 96-9348:** This, too, was a case through prescreening where the assets were inquired about but the computer would not print ANo Assets.@"
- i. **Case Number 97-3254:** This client was over A and under B, so Legal Action's attorney, Louis Mestre, filled out an A/B form. When he does that, he always inquires about assets, and would have noted if the client was over our asset level.
- j. **Case Number 97-9365:** This was a prescreening intake where the computer would not print out

~~A~~No Assets.@

- k. **Case Number 97-1619:** The client was receiving SSI, and therefore the assets were below Legal Action's maxima.
- l. **Case Number 96-3109:** The client was receiving SSI, with assets below Legal Action's maxima.
- m. **Case Number 97-591:** Here we referred to an intake from the previous month, where the only assets belonged to the husband and the client was separated from the husband.
- n. **Case Number 97-1909:** In this case, the debts were noted, which implies that the assets were inquired into.
- o. **Case Number 97-255:** In this case, the husband threatened to kill our client, and she had no access to any money.
- p. **Case Number 97-291:** Here, the client lived with the grandmother in a low-income neighborhood.
- q. **Case Number 97-113:** The client received SSI and the case involved subsidized housing. The assets were below Legal Action's maxima.
- r. **Case Number 97-136:** The spouse's income was SSI, so assets below Legal Action's maxima.
- s. **Case Number 97-194:** The client was unemployed, receiving Medical Assistance and Food Stamps, and had \$200 in assets.
- t. **Case Number 97-254:** This was a repeat client, so we knew that she had few assets.
- u. **Case Number 97-289:** The client owed rent and could not pay, so was being evicted. Therefore, we assumed she had no assets.
- v. **Case Number 97-255:** Assets were indicated in this case.

- w. **Case Number 97-291:** Intake here was done by a volunteer, who recorded rent as \$500 and a car worth \$403.
- x. **Case Number 97-136:** Income was SSI, so assets below Legal Action's maxima.
- y. **Case Number 97-513:** The client was in the JOBS program and applying for Medical Assistance and Food Stamps, thus very likely had few assets.
- z. **Case Number 97-522:** The client was 22 years old with no job and staying at an aunt's house, thus very likely had no assets.
- aa. **Case Number 97-61:** The client described herself as married in jail, a drug user, having sold her clothes and personal belongings, with the only income being foster care money received for foster children. Highly unlikely the client had any assets.
- bb. **Case Number 97-61:** The client lived in subsidized housing, which has asset limits to qualify for the program lower than Legal Action's.

5. Legal Action Staff Currently Makes Asset Notations.

Finally, as a result of this issue being raised by the Audit Team, we have instructed staff to always make a notation in the asset portion of the intake sheet, and staff is doing so. One staff attorney reported that a recent inquiry into a client's assets reduced the client to tears. The client sobbed, "But I don't own anything." High asset level is never a problem with our clients.

VII. CONCLUSION

In this section the OIG Report states:

The grantee needs to take action to improve the accuracy of the case data reported in its Grant Activity Report. Most of the problems, both large and small, were caused by procedural deficiencies that resulted in cases not being promptly closed, duplicate cases being reported, and the recording and reporting of cases even though no legal services were provided. Aside from the one-time problems at the Madison office, the reporting problems were systemic and need greater management attention. Grantee management should adopt control procedures over the processing of applicant's request for assistance and case closures to eliminate the systemic problems. As a final control improvement, management needs to review the Grant Activity Report for accuracy before it is submitted to LSC.

Legal Action strenuously disagrees with the OIG's conclusion that "Most of the problems, both large and small, were caused by procedural deficiencies that resulted in cases not being promptly closed, duplicate cases being reported, and the recording and reporting of cases even though no legal services were provided." Legal Action also strenuously disagrees that these reporting problems were systemic and need greater management attention, or that control procedures over the process of potential clients' requests for assistance and case closures are necessary to eliminate systemic problems. We also state that management has always reviewed the Grant Activity Report for accuracy before it is submitted to LSC, and will continue to do so.

Legal Action also disagrees with an excessive preoccupation with statistical data to the exclusion of attention to client service. Undergoing this audit and responding to the draft Report has consumed tremendous time and resources, and has significantly interfered with our ability to serve clients.

VIII. RECOMMENDATIONS

Legal Action has the following responses to the following recommendations:

Recommendation 1:

Implement procedures providing for the supervisory review over preparation of the Grant Activity Report.

The Grant Activity Report is prepared in Legal Action's administrative offices by the Executive Director and the Administrator. Its preparation in prior years has been reviewed by the Executive Director and will continue to be reviewed by him. The CSRs are derived from case openings and closings throughout the year on the part of 83 staff people at Legal Action, including supervisory review of whether the case has been appropriately opened,

closed and the legal problem properly recorded. The accuracy of these case numbers will be improved by the clearer instructions provided by the improved CSR Handbook and the recent LSC Program Letters; through the computerization of all Legal Action offices, which had already been implemented by the time of the OIG audit; and through continued training sessions for staff in the appropriate application of the CSR Handbook.

Entry of the data that goes into the CSRs is just one small part of the work that Legal Action lawyers, paralegals and secretaries must do each day in order to fully serve our clients. Our advocates have high caseloads and a significant work burden, and do the very best they can on CSRs under the circumstances. As mentioned earlier, any failure to close cases timely is due only to the fact that our staff is trying to meet the needs of new clients and has not had time to close old cases. This is not due to any attempt to overstate our numbers.

For the audited year of 1997, the CSR Handbook did not specify that the CSR data must be self-audited by the program. In November 1998, the LSC issued Program Letter 98-8, a revised CSR Handbook which requires a management review of the CSR submission. LSC also issued Program Letter 99-1 on February 8, 1999, which provides further guidance on the conduct of the required management review for 1998-99 Grant Activity Reports and case service reporting submissions. These LSC instructions were not in effect during the audited period.

Legal Action has fully complied with the new management review process required by the Revised CSR Handbook and Program Letter 99-1.

On December 2, 1998, copies of the Revised CSR Handbook were distributed to all staff (See Appendix M). Staff were instructed to ^Aplease review the revised CSR Handbook carefully and follow its requirements carefully.[@] On December 16, 1998, all staff were provided further written instructions on the procedural changes required by the revised CSR Handbook. A copy of these written instructions are attached as Appendix N. The instructions highlighted the new LSC guidance on how advocates are to report multiple instances of assistance to the same client during a single year. This reporting guidance had not been available in the previous version of the CSR Handbook. We instructed staff: ^AIf you have a client who returns in the same year with the same problem, after you have already closed the first case for the client, please consult with your Managing Attorney so we can make arrangements to reopen or not to count the second visit.[@] The Managing Attorneys in each office and the administrative staff devoted an extensive amount of management time to reviewing the 1998 CSR data prior to submission.

On December 16, 1998, staff members were provided separate written instructions on implementing the new LSC guidance on the timely closing of cases for the 1998 Grant Activity Report as contained in the Revised CSR Handbook. Appendix O is a copy of the written instructions to all staff.

On February 9, 1999, staff were provided additional written instructions stressing the importance of proper year-end reporting of the 1998 closed and open cases per the new LSC guidance contained in LSC Program Letter 99-1 dated February 8, 1999 concerning the *1998-1999 Grant Activity Reports and Case Service Reporting*. Appendix P is a copy of those instructions.

On February 9, 1999, the managers were provided written instructions on completing their year-end management review as required by the new CSR Handbook and Program Letter 99-1. Each manager was provided with a complete listing of all 1998 open and closed cases for her office. The managers and administrative staff spent approximately two and half weeks in February 1999 re-reviewing 1998 case files and intake sheets so as to make sure our 1998 Grant Activity Report conformed to the new LSC CSR guidance. Appendix Q is a copy of those instructions.

Beginning in 1998 and *prior to the OIG visit*, Legal Action had expanded the firm's computerized case/client management system to cover all offices. As described to the OIG auditors during their visit, a component of the new computerized CSR process is a CSR self-review checklist. A copy of the latest version of the checklist is attached as Appendix R. The checklist requires the person responsible for maintaining the CSR data at each office to run a series of database reports which look for cases which may need to be reviewed for CSR accuracy.

The reports look for data entry errors, duplicate clients and timely closing of cases. The checklist also requires the generation quarterly of an open and closed case report for review by the individual advocates and management staff.

On May 19, 1998, Legal Action distributed to all managers copies of the LSC Program Letter 98-3 issued May 12, 1998 which redistributed the July 1993 version of the CSR Handbook. All managers were instructed to review the attached information and take whatever steps were necessary within their areas of responsibility to assure continued compliance with the LSC CSR procedures. A copy of the instructions to the managers is attached as Appendix S. All staff were instructed to reread the LSC case closure definitions and reaffirm the proper use of the LSC CSR definitions.

Also, on May 29, 1998, Legal Action distributed a copy of LSC Program Letter 98-3 to all staff and instructed staff to reread the LSC case closure definitions and reaffirm the proper use of the LSC CSR definitions. A copy of these instructions to staff is attached as Appendix T.

Management continues to train staff, refine its computer tracking system and urge staff to close cases timely, and thus to improve the accuracy of the CSRs.

Recommendation 2:

Implement procedures to preclude the reporting of cases when legal services have not been provided.

Legal Action has not reported cases when legal services have not been provided. It is inaccurate and misleading to conclude that cases wherein legal services have been provided in 1996 but closed in 1997 represent cases where legal services have not been provided.

Legal Action will conduct periodic training of staff to urge that cases be closed contemporaneously with the provision of legal services and consistent with the new CSR Handbook.

The Audit Team stated in the exit interview that there is a lot of leeway as to professional judgment on the closure of cases, and that this professional judgment should not be interfered with. We agree with this. Oftentimes, cases are left open by the attorney because it is possible that there will be a further event in the case, and it would be a waste of time to close the case and then reopen it should that further event occur. Where the event does not occur, the case may be open for a period of weeks or months, and then closed without further activity. This does not mean that the case was improperly kept open or that no legal services were provided in the case.

As documented by the various written instructions and trainings described under "Recommendation 1" above,

Legal Action has provided training and discussions for staff with regard to appropriate closing junctures and timely closing of cases based upon the new LSC guidance contained in the revised CSR Handbook and Program Letter 99-1 issued since the OIG's July 1998 visit .

Recommendation 3:

Direct managers to periodically review a sample of open and closed cases and determine if their status is correct.

On May 14, 1999, the LSC issued Program Letter 99-2, requiring recipients to conduct a Self-Inspection - Case

Service Reporting.@ This program letter requires the type of sampling of open and closed cases proposed by OIG Recommendation #3. Legal Action is in the process of sampling 173 closed cases and 137 open cases. This review will be completed by July 1, 1999. This review is consuming an enormous amount of time and resources. Appendix U is a copy of the instructions to the managers for the completion of the case sampling.

In addition, as a routine component of Legal Action's practice, supervising attorneys review open and closed case files to monitor the quality of client services to verify that case records contain documentation of LSC compliance, and to ensure accuracy of CSR reporting. Items 6, 7, 8 and 9 of the current Legal Action Supervisory Standards, which are attached as Appendix V, direct the managers to conduct such open and closed case reviews. Since the OIG visit, the managers from each of the offices have reviewed their internal case review processes to confirm their effectiveness.

Recommendation 4:

Implement follow-up procedures to track clients, either through telephone calls or written correspondence, before concluding that the client has withdrawn from the representation.

Legal Action has a follow-up procedure, which is the sending of a letter to the client's last known address prior to the closing of a case. In situations where an appointment is made for a client, and the client does not appear for the appointment, it is reasonable to assume that the client has withdrawn from the representation. In such situations, trying to track down the client through a series of telephone calls, or writing a letter to the client, is not cost-effective. Again, Legal Action's advocates have an overwhelming caseload and amount of work, and do not have the time to track down clients who do not even appear for their initial appointment.

Recommendation 5:

Implement procedures requiring the staff to document that asset eligibility guidelines have been followed in determining client eligibility.

Legal Action staff were reminded shortly after the OIG audit that, as a matter of good practice, the asset portion of the intake sheet should contain a notation showing that assets were inquired into. On September 16, 1998, an extensive staff training session was conducted based on the verbal suggestions from the OIG exit interview and from the additional LSC CSR guidance issued in LSC Program Letter 98-3 *CSR Handbook* on the May 12, 1999. The training included instructions on the intake sheet notation on asset verification, the timely closing of cases and CSR reporting procedures for repeat clients within a year and clients who withdrew. Appendix

W is a copy of the training agenda.

Written instructions confirming the verbal asset notation instructions were issued to all staff on September 28, 1998. Appendix X is a copy of those instructions, which state **A...remember to make a notation on the intake sheet that the client's asset eligibility was verified.**

In April 1999, Legal Action revised the intake sheet and computerized client/case management system to add the required data field of **Assets Under Max. Limit: Yes or No**. A case cannot be docketed into the Legal Action CSR system unless this information is provided by the intake person. On April 12, 1999, Legal Action issued instructions to all staff on completing the revised intake sheet. Appendix Y is a copy of the instructions, which state the following:

The financial eligibility reporting block has been reconfigured and a new required field added **Assets Under Maximum Limit: Yes or No**. This field will print on the computer generated intake sheets.

Notes on the intake sheet or attached to the intake sheet should contain the information obtained from the client which supports your determination that the client's assets were under the LSC maximum limit.

On April 14, 1999, a staff training session was conducted on the new intake form and written instructions. Appendix Z is a copy of the staff training agenda showing Item IA4 as a discussion on client asset reporting on the new intake sheet. In addition, agenda item IB involved additional staff training on the new LSC CSR procedures and item II involved additional training on reviewing the open/closed case reports.

Intake sheet reviews completed by management after the OIG visit have shown that staff attorneys and paralegals are noting assets.

Recommendation 6:

Implement procedures to ensure that adequate controls are provided over closed case records that are archived.

As was mentioned earlier in this response, Iron Mountain, the country's largest file storage company, purchased the Business Record Center, the local company, in mid-1997. To

achieve more efficient records management, Iron Mountain implemented a new computerized file inventory system entitled ASafekeeper®, which greatly enhanced the capabilities of the previous system. Appendix AA is a description of the new system. This system was implemented on August 1, 1998, which was after the OIG visit and after our problems with missing files were encountered. We also investigated the option of utilizing the services of other file storage vendors in the Milwaukee area but found that Iron Mountain was the most economical and technologically advanced storage facility in the area. This firm continues to be used by many of the larger financial organizations and law firms in the city.

We requested a meeting with Iron Mountain management to address and alleviate the problems of our missing files. The Milwaukee Office Managing Attorney and Office Manager met with John Vogel, Iron Mountain's Account Manager, in February 1999, and advised him that Iron Mountain needed to find our files and guarantee that we would not encounter additional problems. Legal Action decided not to send any further files to the storage company until Mr. Vogel addressed our needs. Mr. Vogel was very reassuring and indicated that Iron Mountain had made staffing and systemic changes to address internal problems they had been experiencing.

On March 10, 1999, Iron Mountain conducted a training of Legal Action's support staff on Iron Mountain's new computerized database bar coding system and procedures. We discussed how to better use bar coding for our files and various procedures that would be more efficient for both Legal Action and Iron Mountain.

In addition, Iron Mountain has conducted its own audit of our files to ensure that its records corresponded with ours.

In order to avoid any future problems for all files in the Milwaukee office docketed after January 1, 1997, LAW will use the procedures outlined below:

1. LAW will purchase a bar code scanner and software to interface with our existing client/case management database.
2. Each case will have a bar code number generated off the client/case management system. This bar code will correspond to our case file number for that client.
3. Iron Mountain will provide storage box bar codes to use when closing and preparing cases to be sent to storage. The bar code on each box will correspond to the box number assigned by Iron Mountain.
4. When cases are closed and prepared to be sent to storage, the docketing clerk will scan the bar code of the storage box, and then scan the bar codes of those case files placed in that storage box. A printout will be kept of each storage box outlining its contents.
5. We will no longer require that our files be stored in absolute sequential number order. As an example, in the first quarter of year 2000, all 1997 files that have been closed will be removed from the file cabinets, boxed and sent to storage. Any 1997 files that are subsequently closed will be bar coded and held until a complete storage box can be filled. We will no longer send individual files to storage, only complete boxes.

Our system will track files by client case number, and will indicate the storage box number in which the file can be found.
6. Iron Mountain will be notified (by fax) for a pickup. When the pickup is made, Iron Mountain will provide our office with an activity sheet outlining the pickup.
7. Iron Mountain will be notified (by fax) when we request a file from storage. We will

request an entire box instead of individual files. This will insure that the file we need will be refiled in the correct storage box by our staff prior to returning the box to storage. Iron Mountain will provide our office with an activity sheet outlining the delivery.

8. Iron Mountain will provide us with a periodic printout of our storage activity, listing box numbers received and the contents.

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